

IN THE MATTER OF:

CARINA RIVERA,

Complainant,

and

MENARD, INC.,

Respondent.

CHARGE NO(S): 2007CF0676
EEOC NO(S): 21BA62680
ALS NO(S): 08-0132

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8b-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Entered this 23rd day of August 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
CARINA RIVERA,)	
Complainant,)	Charge Nos: 2007CF0676
)	EEOC No: 21BA62680
)	ALS No: 08-132
)	
and)	
)	
MENARD, INC.,)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to dismiss this case, filed August 19, 2009. The record shows that the motion has been served on all parties and the Illinois Department of Human Rights.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Respondent contends this matter should be dismissed due to Complainant's conduct, which has resulted in unreasonable delay of this matter. Complainant objects to the motion.

FINDINGS OF FACT

The following findings of fact were made from the record:

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on July 24, 2006. The Department, on behalf of Complainant, filed a Complaint based on the underlying Charge with the Illinois Human Rights Commission (Commission) on March 19, 2008, alleging that Respondent engaged in conduct in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*
2. Respondent filed a verified answer to the Complaint on April 30, 2008.
3. A discovery order was issued on June 10, 2008, ordering the parties to propound initial discovery no later than July 11, 2008 and setting a discovery status for August 27, 2008.

4. Respondent served its interrogatories and requests to produce on Complainant on August 4, 2008.
5. Respondent filed a motion to compel answers to its discovery on October 3, 2008. On October 14, 2008, both parties appeared through respective counsel for hearing on the motion. The motion was granted. Complainant was ordered to provide answers to discovery by November 21, 2008.
6. On November 13, 2008, Complainant's attorney, Asonye & Associates, filed a motion to withdraw. The motion was granted on November 26, 2008. Complainant was ordered to obtain substitute counsel or to appear personally at the next status on February 10, 2009.
7. On February 10, 2009, Respondent appeared through counsel; Complainant appeared *pro se*. An order was entered allowing Complainant additional time to secure substitute counsel. The order indicated that if Complainant does not secure substitute counsel by the next status date, set for March 10, 2009, she should be prepared to move forward with this case.
8. Complainant's substitute counsel, Belongia & Shapiro, filed an appearance and appeared on March 10, 2009. An order was entered setting a status for April 14, 2009.
9. Belongia & Shapiro filed a motion for leave to withdraw on June 24, 2009. The motion was granted on July 14, 2009. An order issued ordering Complainant to secure substitute counsel or to appear on the next status date set for August 4, 2009. The order indicated that discovery would proceed on the next status date.
10. On August 4, 2009, Complainant did not appear and the record showed no attorney appearance had been filed on behalf of Complainant. An order issued on August 6, 2009, ordering Complainant to serve all answers to discovery no later than August 17, 2009. The order indicated that should Complainant fail to do so, Respondent shall file a motion to dismiss and notice it for hearing on the next status date. The order further warned Complainant that failure to comply with the order may result in dismissal of this case. Status was set for August 26, 2009.

11. Respondent filed a motion to dismiss on August 19, 2009. Complainant filed a response to the motion on August 24, 2009. On August 26, 2009, Respondent appeared through counsel and Complainant appeared *pro se* for hearing on the motion.

CONCLUSION OF LAW

Complainant's conduct in failing to answer discovery has resulted in unreasonable delay of this matter.

DETERMINATION

Dismissal of this Complaint is warranted due to Complainant's conduct, which has unreasonably delayed these proceedings.

DISCUSSION

Respondent contends this matter should be dismissed because it has been awaiting answers to its discovery since August 1, 2008 and Complainant has failed to comply with Commission orders to answer discovery. Complainant contends that she has not answered discovery because she has been having trouble retaining an attorney.

On October 14, 2008, pursuant to a motion to compel, Complainant was ordered to provide discovery answers to Respondent by November 21, 2008. Since then, Complainant's initial attorney withdrew and, after Complainant secured substitute counsel, Complainant's substitute counsel withdrew. Complainant was then allowed an additional opportunity, until August 4, 2009, to obtain a second substitute counsel. When Complainant failed to do so and also failed to appear for status hearing on that date, an order was issued ordering Complainant to serve answers to Respondent's discovery no later than August 17, 2009. Complainant failed to comply with that order.

Section 5/8A-102(l)(6) of the Act authorizes a recommended order of dismissal, with prejudice, as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the Administrative Law Judge. Similarly, Section 5300.750(e) of the Commission rules provides for a recommendation of dismissal with prejudice if a party fails to appear at a scheduled hearing

without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any order entered or otherwise engages in conduct which unreasonably delays or protracts these proceedings.

Complainant's conduct in failing to serve discovery answers, although allowed sufficient opportunity to do so, has resulted in unreasonable delay of this matter.

RECOMMENDATION

Accordingly, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: August 31, 2009

BY: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section